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January 31, 2022

VIA ECF

Honorable Paul A. Engelmayer, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *Fitzpatrick and Caputo, v. Boston Market Corp.*, 21 CV 9618 (PAE)

Dear Judge Engelmayer:

We represent Plaintiffs in the above-referenced matter. In accordance with the Court's January 28, 2022 Order (Dkt. No. 18), we write, with Defendant's consent, to respectfully set forth (a) a schedule of pre-certification discovery the Parties agreed to, and (b) the proposed briefing schedule for Plaintiffs' anticipated motion for class certification.

On January 21, 2022, Plaintiffs served document demands and interrogatories on Defendant seeking class-related discovery including, among other things, the identities of all putative class members (*i.e.*, potential witnesses in this action) and payroll records for all putative class members during the relevant statutory period. The Parties have agreed that, in lieu of producing this voluminous information prior to a decision on class certification, Defendant will produce the following information by February 28, 2022:

- A list of all Boston Market stores in operation in New York State during the relevant statutory period and the dates those stores have been in operation;
- For each Boston Market location, a list of all job positions employed at each location and how many individuals were employed in such positions on a specific date to be agreed upon by the Parties;
- Any job descriptions Defendant has for putative class members as defined in Plaintiffs' Amended Complaint, including without limitation any descriptions provided for in job postings;
- Any and all employee handbooks of Defendant since 2015;
- Any and all employee guidelines of Defendant since 2015; and

- Any other written guidance promulgated by Defendant with respect to the job positions.

Defendant also agreed that, for the purposes of class discovery and the contemplated motion for certification, they will not contest that the putative class members were paid on a bi-weekly basis. Finally, Defendant agreed to produce, by March 18, 2022, a Fed. R. Civ. P. Rule 30(b)(6) witness (or witnesses, if more than one is needed) who will be prepared to testify about all the documents they produce as well as all the job descriptions set forth in the putative class definition in Plaintiffs' Amended Complaint. (Dkt. No. 7 at ¶ 24). The Plaintiffs also agree to produce themselves for deposition on or before March 18th.

Subject to the Court's approval, the Parties also agreed that Defendant's responses to Plaintiffs' January 21, 2022 discovery demands will be held in abeyance pending the outcome of the certification motion.

Finally, the Parties agreed on the following briefing schedule:

- Plaintiffs' motion for class certification will be filed on or before April 14, 2022;
- Defendant's opposition will be filed 30 days after the motion is filed; and
- Plaintiffs' reply will be due 14 days after Defendant files their opposition.

We thank the Court for its attention to this matter and respectfully request that the Court So Order this discovery plan and briefing schedule.

Respectfully submitted,

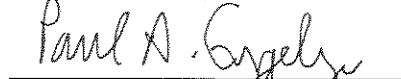
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/s/Josef Nussbaum

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cc: All Counsel of Record (via ECF)

SO ORDERED.



PAUL A. ENGELMAYER
United States District Judge

Dated: March 17, 2022